

Response to Amendment

The reply filed on 11/10/2008 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

In order to expedite the prosecution of this application and in order to avoid having to present another office action, the examiner of record respectfully request further clarification concerning the matrix in claim 19, wherein phaco power levels and fluid flow conditions “will not generate sufficient heat to create damage to tissue within the eye”. Importantly, distinguishing this invention with the prior art of record on the basis of the negative limitation cited above without pointing out its specific support in the specification provides a very weak argument since the prior art had to meet the requirements of Section 101.

The MPEP requires that “any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). See MPEP § 2163 - § 2163.07(b) for a discussion of the written description requirement of 35 U.S.C. 112, first paragraph.

Based on the above observations, the examiner of record requests specific references to the specification to ensure that the comparisons to the prior art presented by the applicant are in fact adequate. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30)**

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DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel A. Mendez whose telephone number is 571-272-4962. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Manuel A. Mendez/

Primary Examiner, Art Unit 3763

Manuel A. Mendez
Primary Examiner
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